



NAVAJO NATION DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

ETHEL BRANCH
Attorney General

HEATHER L. CLAH
Deputy Attorney General

To: All One-Hundred and Ten (110) Chapter Governments

From: Rodgerick Begay
Rodgerick T. Begay, Assistant Attorney General
Navajo Nation Department of Justice, Chapter Unit

Date: June 28, 2024

Re: Virtual-Hybrid Chapter Meetings

On June 25, 2024, certain sections of the Local Governance Act (LGA),¹ was amended to allow for virtual attendance of Chapter Meetings. This memorandum explains why each Chapter must now pass another Chapter Resolution or Chapter Referendum to begin using virtual attendance. To be clear, Chapters cannot begin using virtual Chapter Meetings right now. This is due to the way the amendment was drafted. Additionally, to help Chapters begin virtual Chapter Meetings, the Department of Justice has developed a template for policies and procedures for implementing virtual-hybrid Chapter Meetings. The template will be shared as an attachment to this memorandum.

Prior to the law change, “attendance” of Chapter Meetings was defined as being “present.”² For stipend compensation and voting at Chapter meetings, presence required physical in-person presence. When the COVID-19 Emergency was declared, the Navajo Nation began approving “temporary suspensions”³ of certain laws to the LGA because certain LGA laws were impractical. For example, the LGA requires a twenty-five member quorum for most Chapters. This was impractical because of the social gathering restrictions. Accordingly, the “presence” law was temporarily suspended to allow for virtual presence. Since all temporary suspensions were temporary, it meant that these suspensions would eventually end. On June 15, 2023, the COVID-19 Declaration of Emergency was lifted and, in turn, also ended all temporary suspensions of laws. This meant that the application of section 2(2) of the LGA returned to requiring in-person presence for Chapter meetings.

How could the LGA be amended to change the meaning of presence? The answer is at section 1(E) of the LGA. Essentially, there are three ways the LGA can be amended but for purposes of this memorandum, only one will be discussed. When the Navajo Nation Council approves an amendment to the LGA, the amendment *normally* takes effect when the Navajo Nation President signs it into law. However, under section 1(E) of the LGA, all amendments approved

¹ 26 N.N.C. §§ 1 *et seq.*

² 26 N.N.C. § 2(2).

³ Navajo Nation Council Resolutions CMA-09-20, CAP-19-20, CMY-36-20, CJY-64-20, CJA-01-22. Naabikiyati Committee Resolutions NABIJN-26-20.

by Council and President requires further approval from a majority of Chapters. Since there are one-hundred and ten (110) total Chapters, fifty-six (56) Chapters constitutes a majority and therefore such amendments would need 56 Chapters to agree to such amendments to the LGA. *Normally*, once 56 Chapters pass Chapter Resolutions agreeing to the amendment, the amendment takes immediate effect.

Noteworthy, the Navajo Nation President has lawful authority to veto a bill approved by the Navajo Nation Council.⁴ When this occurs, Chapters do not have the opportunity to consider any amendments approved by the Navajo Nation Council. However, the Navajo Nation Council also has lawful authority to override a Presidential veto.⁵ This occurred for the virtual-hybrid amendment. The Navajo Nation Council approved CO-85-23 in October 2023 to permanently amend the LGA. However, the President vetoed it. Then, in January 2024, the Navajo Nation Council overrode the veto through Resolution CJA-03-24. Thus allowing Chapters to begin “step one” of the process of obtaining approval from a majority of Chapters. In other words, section 1(E) of the LGA was “step one” in requiring approval from 56 Chapters to agree to the amendments in CO-85-23.

On or about June 24, 2024, the Chief Legislative Counsel’s Office received the requisite number of Chapter Resolutions supporting the amendments in CO-85-23. Although there were several Chapters who submitted Chapter Resolutions to oppose the amendment, section 1(E) of the LGA only requires a simple majority of Chapters. The Chapter Resolutions were reviewed once more and **on June 25, 2024, the amendments became effective**. This means that the LGA is officially amended and the Department of Justice will soon provide updated copies of the amended LGA to all Chapters.

Now, for “step two.” Even though CO-85-23 took effect on June 25th, Chapters still cannot conduct virtual Chapter meetings. Why? As mentioned above, “step one” was only to comply with section 1(E) of the LGA. Step one is now complete. Step two derives from the way CO-85-23 changed section 1003(B) of the LGA.

To be clear, the new law allows Chapters to keep in-person Chapter Meetings. If Chapters don’t want to offer virtual-hybrid meetings, the new law is written in such a way that those Chapters are not required to pursue virtual-hybrid Chapter meetings. In other words, despite the law change, any Chapter can keep requiring in-person Chapter meetings and not offer any virtual attendance.

However, if a Chapter wishes to adopt virtual-hybrid Chapter Meetings, new section 1003(B) further requires each Chapter to approve virtual-hybrid Chapter Meetings by either: 1) Chapter Resolution; or 2) Chapter Referendum. This is basically step two. Therefore, even if your Chapter passed a Resolution to support CO-85-23, that was only step one in complying with section 1(E) of the LGA. Your Chapter must now comply with new section 1003(B) (i.e. “step two”). To be clear, the Chapter cannot use the same Chapter Resolution under step one. The reason is explained below.

⁴ 2 N.N.C. § 1005(C)(11).

⁵ 2 N.N.C. § 164(A)(17).

Chapter Resolution or Chapter Referendum? Chapter Resolutions only require a majority of votes cast at a Chapter Meeting having sufficient quorum of registered Chapter members. Whereas, a Chapter Referendum would require the Chapter to hold an election with a proper ballot question to ask their community to decide whether or not to allow virtual-hybrid Chapter meetings for their own Chapter. A Chapter Referendum is a formal election requiring adherence to the Chapter Referendum laws in the Election Code.⁶ Some communities may feel that a Chapter Referendum would be more appropriate to decide an issue like this. Whereas, other Chapters may feel that a Chapter Resolution will suffice. The new law allows each Chapter to decide how they want to approve virtual-hybrid meetings for their own Chapter.

Whether by Chapter Resolution or Chapter Referendum, new section 1003(B) also requires Chapters to develop policies and procedures for conducting virtual-hybrid Chapter meetings. These policies must be developed **before** each Chapter votes by Resolution or Referendum. Chapters may develop their own policies and procedures. However, the Department of Justice has prepared a template policy and procedure which Chapters may use if Chapters do not want to develop their own policies and procedures. This template is attached. The template, without further modifications, is legally sufficient. Legal sufficiency without modification is mentioned because Chapters may also modify the template. However, any modifications made by Chapters will not be deemed legally sufficient until reviewed by the DOJ Chapter Unit. Thus, if Chapters wish to modify the template and wants DOJ review, please submit your request through the High Q portal: <https://nndoj.navajo-nsn.gov/High-Q>.

Please share a copy of this memorandum with all Chapter Officials. Thank you.

cc: Office of the President and Vice-President

Office of the Attorney General

25th Navajo Nation Council

Office of Chief Legislative Council

⁶ Namely, sections 403(B), 405, 407, and 408 of Title 11.